

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

E-NUMERATE SOLUTIONS, INC. and
E-NUMERATE, LLC,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

C.A. No. 19-859-RTH

PLAINTIFFS' MOTION TO AMEND THE SCHEDULING ORDER

Plaintiffs e-Numerate Solutions, Inc., and e-Numerate, LLC (collectively “e-Numerate” or “Plaintiffs”) hereby moves this Court to amend the current Scheduling Order (D.I. 57) in this matter in light of changes in Judge Albright’s Order Governing Proceedings – Patent Cases that alters the order in which the parties submit claim construction briefing. The parties met and conferred, and the Government opposes this motion. In support thereof, Plaintiffs aver as follows.

WHEREAS this Court has expressed a preference for following Judge Albright’s claim construction procedure in this matter (D.I. 36 & 54);

WHEREAS Judge Albright has amended his Standing Order to require the defendants to submit the initial claim construction brief via Orders dated June 24, 2021, and October 8, 2021 (Exs. A & B);

WHEREAS the parties are proceeding towards submission of the initial claim construction briefs in this matter and ample time remains for the United States to prepare and file the first brief (due in mid-January) in accordance with Judge Albright’s revised Standing Order.

WHEREAS Plaintiffs have filed an unopposed motion to amend the scheduling order that has not, as yet, been ruled upon.

WHEREFORE, Plaintiffs respectfully move this Court to amend the Scheduling Order as follows:

EVENT	PRIOR DEADLINE	NEW DEADLINE
Plaintiffs provide constructions for terms identified by the Government	N/A	19 November 2021
Parties disclose extrinsic evidence they may rely upon for claim construction	5 November 2021	3 December 2021
Deadline to meet and confer to narrow terms in dispute and exchange revised claim constructions	19 November 2021	19 December 2021
Government files its opening claim construction brief	3 December 2021	14 January 2022
Plaintiffs file their responsive claim construction brief	7 January 2022	18 February 2022
Government file their reply claim construction brief	21 January 2022	4 March 2022
Plaintiffs file their sur-reply claim construction brief	11 February 2022	18 March 2022
The parties submit the joint claim construction statement and propose dates for the Markman hearing	18 February 2022	25 March 2022
If desired, parties may submit joint technical tutorial to the Court	25 February 2022	1 April 2022
Markman Hearing	To be scheduled	To be scheduled

Deadline for the government to produce technical documents for additional agencies named in the second amended complaint.	7 March 2022	15 April 2022
---	--------------	---------------

Dated: November 8, 2021

Respectfully submitted,

/s/ Sean T. O'Kelly
Sean T. O'Kelly
Gerard M. O'Rourke
O'KELLY & O'ROURKE, LLC
824 N. Market Street, Suite 1001A
Wilmington, DE 19801
302-778-4000
sokelly@okorlaw.com
gorourke@okorlaw.com

Attorneys for Plaintiffs